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THE PUBLICAN PROTECTED;

CONTAINING ALL THE

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RELATING TO

PUBLICANS, INN, AND LIVERY
STABLE-KEEPERS;

ARRANGED UNDER THE FOLLOWING GENERAL HEADS, viz.

Use of Inns—Difference between Inns and Alehouses—Who shall be deemed a common Inn-keeper.

Duty of Inn-keepers, &c.

Inn-keepers' Remedies against their Guests.

Selling Ale without Licence.

Concerning the Penalties for retailing Spirituous Liquors without an Excise Licence.

Alehouses may be repressed, and of the Forfeiture of Recognizance.

Alehouses must be licensed, and Recognizances entered into, to preserve order therein.

Concerning Tipling and Drunkenness.

Diversions and Gaming in Public Houses.

Concerning the Quartering of Soldiers.

Ale Vessels, and the Measures thereof—Plate Vessels.

Enhancing the Price of Ale.

Debts for Spirituous Liquors under 20s. not recoverable.

The whole selected from the several Acts of Parliament now in force, the latest Decisions of the Court of King's Bench, and the Magistrates at the Quarter Sessions, &c. in particular Cases:

INTENDED AS A

Complete Director to every Publican, &c.

IN THE MOST EXACT AND LEGAL MANAGEMENT OF
HIS BUSINESS.

By a Gentleman of the Middle Temple.

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L A W S

RELATING TO

PUBLICANS, INN-KEEPERS, &c.

OF INNS.

SECTION I.

*Use of Inns—Differences between Inns and Alehouses
—Who shall be deemed a common Innkeeper.*

1. THE ancient, true, and principal use of Inns, Ale-houses, Victualling-Houses, *Use of Inns.* was for receiving, relieving, and lodging of way-faring people travelling from place to place, and for such supply of the wants of such people as are not able by greater quantities to make their provision of victuals; and not meant for entertainment and harbouring of lewd and idle people, to spend and consume their money and their time in a lewd and drunken manner. *Dalton, Chap. 7. p. 27.*

2. INNS are designed for lodging and entertaining travellers: but every Inn is not an Alehouse, nor is every Alehouse an Inn; yet if an Inn uses common selling of ale, it is then also an Alehouse, and if

Difference between Inns & Alehouses.

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an Alehouse lodges and entertains travellers, it is also an Inn.

3. It was resolved by all the Judges, that any person might erect an Inn to lodge travellers, without any licence or allowance for such erection. *Dalt.*

*Licence to
erect Inns.*

c. 56. Blackerby, 170.

4. But it seems to be agreed, that the keeper of an inn may by the common law be indicted and fined, as being guilty of a public nuisance, if he usually harbour thieves, or persons of scandalous reputation, or suffer frequent disorders in his house, or take exorbitant prices, or set up a new inn in a place there is no manner of need of one, to the hindrance of other ancient and well governed inns, or keep it in a place in respect of its situation wholly unfit for such a purpose. *1 Haw. 225.*

5. A person who makes it his business to entertain travellers and passengers, and provide lodging and necessaries for them and their horses, and attendants, is a common Inn-keeper; and it is no way material whether he has a sign before his door or not. *2 Rol. Rep. 345. Palm. 374.*

6. But though it be the entertaining of passengers that makes a man an Inn-keeper, yet it is said, that if a person, having put a sign before his door, afterwards pulls it down, he thereby discharges himself of the office of an Inn-keeper. *Godb. 346. Palm. 374.*

An Inn-keeper or Victualler cannot *as such* be a Bankrupt, for his gain or livelihood does not arise from buying and selling in the merchandize, but greatly from the use of his house, furniture, attendance, and the like; and though he may have hay, corn, and victuals, to sell again at a profit, yet that no more makes him a trader, than a schoolmaster or other person is, who keeps a boarding-house, and makes considerable gains by buying and selling what he spends in the house, and such is clearly not within the statute. *An Inn-keeper or Publican cannot be a Bankrupt.*

2. *Blackst.* 476. *Burr. Mansf.* 2064.

For the better information both of the Inn-keeper and Publican, it may not be improper to lay before them the following recent decision of the court on this head; inasmuch as it may serve as a caution to them not to be led into an act that may constitute them Bankrupts.

PATMAN v. VAUGHAN.

1 *Term, Rep.* 572.

In the case of *Patman v. Vaughan*, it appeared in evidence that the plaintiff had kept a Public House for nine months, during which time he sold to three or four persons about six gallons of spirits altogether: one of the instances was, that having bought five gallons of spirits of one *Bennet*, he had desired him to send two of the five into the country, to a person who had ordered it of him; it was also said by his own servant, that if

any

any person had sent for liquor, he might have had it. Mr. Justice *Buller* left the question to the jury, with this direction, that if they were of opinion that the plaintiff had endeavoured to make profit of his trading, and was ready to sell to any person who applied to him, and not merely as a matter of favour; that then the *quantum* and extent of the trading was immaterial, and they should find for the defendant. The jury found for the defendant accordingly. *Asburst*, Justice, I do not now consider the question of law to be governed by the *quantum* of the trading, but I take the rule to be this, that where it is a man's common or ordinary mode of dealing, or where, if any stranger who applies, may be supplied with the commodity in which the other professes to deal, and it is not sold as a favour, any particular person so selling is subject to the bankrupt laws. *Buller*, J. the case of *Bartholomew v. Sherwood*, was much stronger than the present; on the trial of this cause, I left the question to the jury, with this direction, that if they were of opinion the plaintiff meant to sell spirits out of his house, and to get a profit by it, the quantity which he sold was immaterial, and he must be considered as a trader. It was proved at the trial, that the plaintiff lived in the public house only nine months, during the course of which time there could not be many instances adduced in evidence of his having sold spirits out of the house, but I particularly directed the jury to advert to the circumstance of there not being one instance of any person, who had applied to buy

buy liquor, having been refused. That is the great point, for as to the extent of the dealing, and the profit which he made, it is immaterial. For if a man makes a considerable profit, he is not likely to become a bankrupt: it is only in cases where the profits of the trade are inconsiderable that such an event is likely to take place. Now the circumstances here were, that from the time when the plaintiff took this house, he was willing to sell spirits to any person who applied, therefore though the time was short, and the instances of his trading were few, yet I thought it proper to be left to the jury, and they found a verdict for the defendant.

SECTION II.

The Duty of an Innkeeper — Refusing to harbour or entertain a Guest — When chargeable for Things stolen or lost — Who is such a Guest as may charge an Innkeeper.

1. IN respect to the duty of innkeepers, it extends chiefly to the entertaining and harbouring of travellers, finding them victuals and lodgings, and securing the goods and effects of their guests; and therefore if one, who keeps a common inn, refuse to receive a traveller, as a guest, into his house, or to find him victuals or lodging, upon his tendering a reasonable price for the same, he is not only liable to render damages for the injury in an action on the case, at the suit of the

party grieved, but also may be indicted and fined at the suit of the king. 9. *Co.* 87. *Dyer* 158. For he who takes upon himself a public employment, must serve the public as far as his employment goes; therefore an innkeeper shall not only answer for his own neglects, but also for the neglects of those who act under him, tho' he should expressly caution against it. 1 *Salk.* 18.

2. But the duty of an innkeeper does not extend to the finding of his guest with clothes or wearing apparel. 2 *Rol. Rep.* 79. And if a guest be assaulted and beat within the inn, he shall have no action against his host, for the charge of the host extends to the *moveables only*, and not the *person* of the guest. 8. *Co.* 32. *Calye's case*.

3. If an innkeeper sell corrupt wine or victuals, an action lies against him; also if his servant sell such corrupt wine or victuals, an action on the case lies against the master, tho' he did not order the servant to sell it to any particular person. 1 *Rol. Abr.* 95.

4. With respect to their refusing to entertain guests, it has been already observed, *Refusing to entertain guests.* that if a person who keeps a common inn, refuse, without a reasonable excuse, either to receive a traveller as a guest into his house, or to find him victuals or lodging, upon his tendering him a reasonable price for the same, he is not only liable to render damages for the injury, in an action on the case, at the suit of the party aggrieved, but may also be indicted and fined at the suit of the king.

1 *Salk.*

1 *Salk.* 388. *Cartb.* 150. It is also said that an innkeeper may be compelled by the constable of the town to receive and entertain a person as his guest. 1 *Shaw.* 268. And therefore if he refuse, under pretence that his house is already full of guests, if this be false an action on the case lies. *Dyer* 158. 1 *Roll. Abr.* 3.

5. Also an Inn-keeper, or a person keeping a Livery Stable, is obliged to receive a horse, though the owner does not lodge in his house; for by taking upon him a public employment he is obliged to serve the public, as far as his employment extends. *Moor* 867. In 2 *Brownl.* 254. it is said by *Coke*, C. J. that an Inn-keeper is not bound to receive an horse unless the master be lodged there. And herewith in *Salk.* 388. *Holt*, chief justice, agrees; but the other three judges differ from him, because by the keeping of the horse the Innkeeper has gain, though it would be otherwise if he had left a trunk, or a dead thing.

Livery Stables, &c.

When chargeable for Things stolen or lost.

6. Inn-keepers are clearly chargeable for the goods of guests stolen or lost out of their inns, and this without any contract or agreement for that purpose; for the law makes them liable in respect of the reward, as also in respect of there being places appointed and allowed of by law, for the benefit and security of traders and dealers. *Dyer* 266. 8 *Co.* 32.

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7. If an Inn-keeper goes abroad he must answer for the goods of his guest, for he ought to have a servant to take care of them in his absence. *1 Rol. Abr. 4.* But if an inn is broke open, and the goods of guests taken away by the king's enemies, the Inn-keeper is not answerable. *Plow.* And if a person comes to an Inn-keeper, and desires to be entertained by him, which the Inn-keeper refuses, because his house is already full, whereupon the party says he will shift among the rest of his guests, and there he is robbed, the host shall not be charged. *Bendl. 60.*

8. It is said in *Dyer*, that if the host require his guest to put his goods in such a chamber under lock and key, and that then he will warrant their safety, or else not, and notwithstanding the guest suffer them to remain in an outer court, whence they are stolen, no action lies against the host; for they were not lost through the neglect of the host, but of the guest. *Dyer 266.* In the case of *Spenser*, but in *Moor*, 78, the same point seems to be holden otherwise; and that the host cannot discharge himself of this branch of his duty, by such a declaration as this.

9. If the host deliver the key of the chamber, where the goods are, to the guest, and he leaves the door open, and the goods are stolen, yet the action lies against the host, for at his peril he ought to keep safely the goods of his guests. *8 Co. 33.* But it is said, if an host demands of his guest what money or goods he has, and he tells him

him none, or less in truth than he has, if afterwards they are lost, the host is not answerable.

10. If a man comes to an inn with an hamper, or basket, in which he hath several goods, and goes away, leaving this with the host, and two days after comes again; but if in the time of his absence the basket and hamper is stolen, he shall have no action against the host; for, at the time of its being stolen he was not his guest, and by keeping the hamper the host had no benefit, and therefore shall not be charged with the loss of it in his absence. *Cro. Jac. 188. Noy. 126.*

Who is such a guest as may charge an Inn-keeper.

11. If *A.* comes with goods to an inn in *London*, and stays there for a week, month, or longer, and is there robbed of them, he shall have an action against his host, though, perhaps, being at the end of the journey, he cannot then be said *transeuns*, or passing, according to the writ in the register. If a man, upon a *special agreement*, boards or sojourns in an inn, and is robbed, the host shall not answer for it. *Latch. 127.* And so if the guest delivers the goods to the host upon another account, he shall not be charged, if lost or stolen. *1 Rol. Abr. 3.*

12. If a man comes to an inn with a horse, which he rides, and leaves it with the host, and goes away from the inn for several days, and in his absence the horse is stolen, then shall the host be charged for it, because he had benefit by the continuance of the horse with him, inasmuch as

he is to be paid for it, and as the owner is a sufficient guest to maintain an action. 1 *Rol. Abr.* 3.

13. If a man, travelling *on his master's business*, comes to an inn with his master's horse, which is there stolen, the master may have an action against the host, because the *absolute property* is in him. *Cro. Ja.* 224. But if a person takes another's horse, and rides him to an inn, where he is stolen, the owner shall not have an action against the host, but must seek his remedy against the taker. 1 *Rol. Abr.* 3. If one joint-tenant of goods is robbed at an inn, both may have an action. *Latch.* 127.

But a *Livery-stable-keeper* seems to differ widely from an innkeeper; for, from the agreement used in the case of *Francis and Wyat*, reported in 3 *Burrows* 1500, it appears, that a livery stable-keeper cannot detain horses as an innkeeper may, because he is not obliged by law to receive them, as an innkeeper is, and stands only on the foot of a special agreement, whereby he gives credit to the person sending, not the thing received; that therefore a chariot put up at a livery-stable-keeper's may be distrained by the landlord of the premises for rent arrear: for the privilege of exemption of cattle or goods from being liable to distress in inns, rests upon their being in the place, *by authority of law, and because the law gives liberty to put them there*; but a chariot at a Livery-stable-keeper's is not there by authority of law, but on a mere private contract, and the owner of it appears to be no more than an ordinary under-tenant, and can have

have no reasonable pretence to be exempt from the general law of distresses.

SECTION III.

In respect to Inn-keepers' Remedies against their Guests.

1. **THEY** may detain the person of the guest, who eats, or the horse which eats, till payment, and this they may do without any agreement for that purpose; for it would be hard to oblige him to sue for every little debt, and a greater hardship that he might not be able to find him who was his guest. 1 *Show.* 269.

Since Inn-keepers are bound by the law to receive guests, for that reason they may detain their goods till they are paid. 1 *Salk.* 388. And by Stat. 11 and 12 *Will.* III. c. 15. Sect. 2. it is enacted, that if any Inn-keeper, Alehouse-keeper, Victualler, or Sutler, in giving any account or reckoning in writing, or otherwise shall refuse or deny to give in the particular number of quarts or pints, or shall sell in measures unmarked, it shall not be lawful for him, for default of payment of such reckoning, to detain any goods, or other things, belonging to the person or persons from whom such reckoning shall be due, but he shall be left to his action at law for the same, any custom or usage to the contrary notwithstanding; for men that get their livelihood by entertainment

of others, cannot annex such disobliging conditions, that they shall retain the party's property in case of non-payment, nor make such disadvantageous and impudent a supposition, that they shall not be paid; and therefore the law annexes such a condition, without the express agreement of the parties. 2 *Rol. Abr.* 8. 5. *Cro. Car.* 271.

2. If *A.* injuriously takes away the horse of *B.* and put him into an inn to be kept, and *B.* comes and demands him, he shall not have him until he hath satisfied him for his meat; for when an Inn-keeper takes a horse into his keeping, he is not bound to inquire, who is the owner of the horse, which he is obliged to keep, let it belong to whom it may; and therefore no reason that the Inn-keeper should be obliged to deliver him until he is satisfied. 2 *Rol. Abr. Telv.* 97.

3. An Inn-keeper that detains a horse for his meat cannot use him, because he detains him as in the custody of the law, and by consequence the detention must be in the name of a distress, which cannot be used by the distrainer. 2 *Rol. Rep.* 438.

4. But by the custom of *London* and *Exeter*, if a man commit a horse to an hostler, and he eat out the price of his head, the hostler may take him, as his own, upon the reasonable appraisement of four of his neighbours, which was, it seems, a custom arising from the abundance of traffic with strangers, who could not be known to charge them with the action; but the Inn-keeper hath no power to sell the horse, by the general custom

custom of the whole kingdom. 3 *Bulst.* 271.
Yelv. 67.

If *A.* commit a horse of *B.* to an hostler in London, and he eat out his head, yet the hostler cannot sell him. For all customs being derogatory to the common law, are to be taken strictly, and there is no custom of London that hath gone so far as this case, to authorize one man to sell and convey the property of another.—2 *Roll. Abr.* 85.

5. In trover for three horses, the defendant pleaded that he kept a public inn at Glastonbury, that the plaintiff was a carrier, and used to set up his horses there, and 36l. being due to him for keeping the horses, which was more than they were worth, he detained and sold them, as well as he might. But on demurrer, judgment was given for the plaintiff, an Inn-keeper having no power to sell horses, except *within the City of London*. And besides, when the horses had been once out, the power of detaining them for what was due before, did not subsist at their coming in again. *Strange* 557. *East. Geo. I.* *Jones and Pearle*.

6. If a horse be committed to an Inn-keeper he may detain for the meat of the horse, but not for the meat of the guest, for the chattels are only in the custody of the law for the debt that arises from the thing itself, and not from the same party, for the law is open for all such debts, and doth not admit private persons to take reprisals. 2 *Roll. Rep.* 438.

7. If a horse be committed to an Inn-keeper,
and

and be detained by him for his meat, and the owner take him away, the Inn-keeper must make fresh pursuit after him and retake him, otherwise the custody of him is lost; for he cannot retake him at any other time. For if a *distress* be rescued, and the party upon fresh pursuit do not retake it, the *distress* is lost; for no man that has only a *naked* custody, can make a reprisal when the thing is out of his custody; for it is the power of an owner and a proprietor, and of him only, to retake such his property, wherever he finds it. 2 *Rol. Rep.* 438.

8. But if an horse be committed to an hostler, and he detain him for his meat, and after the owner comes to an agreement that the hostler shall retain him till he is satisfied, here he hath not only the custody of him as a *distress*, but also the property in him as a pledge; and if the owner take it from him, he shall not only retake it upon fresh pursuit, but wherever he meets it; because he had a property by such contract, and a man that hath a property may retake his own where he meets with it. 2 *Rol. Rep.* 438.

9. Upon evidence the case was, a man had had a horse in an inn, and came thither, and directed that the Inn-keeper should not give him any more food, for he would not be responsible for it; and the question was, whether for the food, after this direction, given by the inn-keeper to the horse, he who brought the horse thither shall be charged, or not? and *Holt*, C. J. at first inclined that this is a discharge, and that the horse (though he might

might be retained by the Inn-keepers) yet is but in the nature of a distress, and it being in the custody of the Inn-keeper in his inn, this is a pound covert, and the horse afterwards ought to be found and maintained at the peril of the inn-keeper; but after, *mutata opinione*, he directed that this was not a discharge; for then any Inn-keeper might be deceived, and it is the lessening of the security of an Inn-keeper who may detain, and by the custom of *London*, sell the horse for his keeping.

10. If a man commit his horse to an Inn-keeper, and he put him to pasture, he may detain the horse, until he is satisfied for the meat; for the pasture of such persons, set up by the law for entertainment, hath the same privilege with the stables. 2 *Rol. Abr.* 86.

11. If a person comes to an inn, and makes a previous contract for lodging for a set time, and does not eat and drink there, he is no guest; but a lodger, and as such is not under the Inn-keeper's protection, but if he eats and drinks there, it is otherwise, or if he pays for his diet there, though he does not eat it there. 12 *Mod. Rep.* 254.

12. If a man's servant, travelling on his master's business, comes to an inn with his master's horse, which is there stolen, the master may have an action against the host, because the absolute property is in him.—*Croke, Jac.* 224.

So if *A.* sends money by his friend and he is robbed in an inn, *A.* shall have the action.

But in all these actions the plaintiff must prove that the defendant kept a common inn, and that he,

he, his son, or servant, was a guest at the time, and that the goods were brought within the inn, and remained under the care of the defendant.—*Buller's Nisi Prius*, 8vo. edit. 73.

SECTION IV.

Of Publicans or Victuallers.

1. **THOUGH** the laws respecting inns and ale-houses are in a great measure analogous, yet I shall here treat of them separately, and confine myself entirely in the remainder of this digest to what immediately pertains to the duty and penalties of the common publican or victualler. The true and principal use of *alehouses and victualing houses* is two-fold; as has been before observed, namely, either for the *relief and lodging* of way-faring people, travelling about their necessary business, or to supply the wants of such poor persons, as are not able by greater quantities to make necessary and abundant provision of victuals for themselves. *Dalt. cap. 7. p. 27.*

Selling Ale without Licence.

2. By the 5 *Geo. III. c. 46.* It is enacted, that every person lawfully convicted of selling ale or beer, or other exciseable liquors, by retail, without licence, (except in fairs, 5 & 6 *Ed. VI. c. 25. 3 C. c. 3.* 26 *Geo. II. c. 31.* and except retailers of spirituous

spirituous liquors without licences, for whom other penalties are provided by law. 9 G. III. c. 6.) shall for every such offence forfeit and undergo the several penalties thereafter mentioned, instead of the several pecuniary and corporal punishments which they are now subject to by any law now in force; that is to say, for the *first offence* 40 shillings, and also the costs and expences of conviction; if not paid within fourteen days after conviction, the offender to be imprisoned for one month, unless he shall sooner pay the penalty, and the costs, charges, and expences of the conviction, and of executing the same; for the *second offence* 4l. and also the costs and expences of conviction; if not paid within one week after conviction, to be imprisoned two months, unless he shall sooner pay the penalty, and the costs, charges, and expences of such second conviction, and of executing the same: for the *third offence* 6l. and also the costs and expences of conviction, if not paid within three days after conviction, to be imprisoned for three months, unless he shall sooner pay the penalty, and the costs, charges, and expences of such third conviction, and of executing the same; and the like penalty for every other offence after the third, as for the third offence. All which costs and expences shall be ascertained by the justice before whom the offender shall be convicted; one moiety of all which penalties and forfeitures shall be to the king; and the other moiety, and all such costs, charges, and expences to the prosecutor, *f. 22.*

3. The

3. The same to be heard and determined by one justice, who shall on information (A) exhibited or complaint made to him, summon (B) the party accused, and also the witnesses, on either side (if he shall be required to summon any such); and on appearance of the party accused, or contempt in not appearing, shall proceed to hear the matter, and examine witnesses on oath, and give judgment; and if he convict (C) the party accused, and such party shall refuse to pay the penalty within the time above expressed, together with the costs, as aforesaid, he shall issue his warrant for apprehending and committing (D) to prison every such offender, for such time, and in such manner, as the nature of the offence shall require, *f. 23.*

4. The clause excepting *fairs*, and the several acts, is from the necessity of the thing, respecting the accommodation of persons resorting thither, but those who shall brew such ale or beer, to be sold by them in fairs, must take care to give notice to the gaugers that the same may be surveyed; for though they are exempted from taking licence, yet they must nevertheless pay the duties of excise. And this indulgence seemeth to be intended only in the place where the common fair is held; and not in any private house; which may be within the limits of the town such fair shall be kept, especially where there are licenced alehouses sufficient. *Stat. 5 & 6. Ed. VI. c. 25. f. 6. and 12 Car. 2. c. 4. f. 39.*

(*Note*, the number of witnesses necessary towards the conviction is not here mentioned, and therefore

fore this seems to rest as it was before, on the *Stat.*

3. *Car c.* 3. which directed the conviction, to be on confession of the offender or oath of two witnesses.)

5. If any person shall think himself aggrieved by the conviction of such justice, and shall give security to the satisfaction of such justice, for the payment of the penalty, costs and expences, to be expressed in the warrant, on conviction, he may appeal to the next quarter sessions, unless such sessions shall be held within six days or less, next after the conviction; and in that case to the next sessions after, but not afterwards; and the sessions shall thereupon determine such appeal, and their judgment shall be final and conclusive; and in case the sessions shall adjudge such appeal frivolous and vexatious, they may adjudge to the party aggrieved by such appeal, costs not exceeding 5*l.* 5 *Geo. III. c. 46. s. 25.*

6. Where a statute makes a new offence, which was no way prohibited by the common law, and appoints a particular proceeding against the offender, as by commitment or action of debt, or information, without mentioning an indictment, then that method must be pursued, and not an indictment; because the mentioning the other methods of proceeding only, seems implicitly to exclude that of indictment; therefore it has been held, and seems clear, that an indictment will not lie for keeping an alehouse without licence. 1 *Salk.* 45. 3 *Salk.* 25.

7. A person selling spirituous liquors, not having
a pro-

a proper licence from the justices, may be convicted under 5 Geo. III. c. 46. Although he has a licence from the commissioners of excise; for the excise licence only prevents the increasing of those particular penalties which are inflicted on persons selling spirits without an excise licence, and does not exempt the party from any penalties to which he may be subject for not having a licence from the justices.

For in the case of *the King against Downs and another*, it appeared that one *Turner*, (who had sold gin and rum by retail), had obtained a proper licence to sell *brandy, and other spirituous liquors*, from two commissioners of excise, pursuant to the statutes; and also an alehouse licence to sell by retail *beer, ale, and other exciseable liquors*, in the common form, under the hands of two justices; but this licence having been granted irregularly, the defendants deemed it void, and accordingly convicted *Turner*, under 5 Geo. III. c. 46. and in the summary form therein prescribed, in the penalty of 40s. with costs, for having sold *gin and rum*, being exciseable liquors, without being licensed so to do: *Turner* appealed to the sessions, where it was quashed, subject to the opinion of the Court of King's Bench on the case.

In support of the order of sessions, it was contended, that if the licence was not granted legally, and the court was clearly of opinion it was not, yet that *Turner* did not incur any penalty within 5 Geo. III. c. 46. under which alone he was convicted: That that act only applied to persons
selling

selling by retail *ale, beer, or other exciseable liquors*, but *not to distilled spirituous liquors*: That the 22d section recited, that by the laws then in force, persons selling ale, or beer, or other exciseable liquors, by retail, without licence, are subject by different laws to different penalties, which had occasioned much confusion; and for the preventing thereof it enacts, that persons convicted of selling ale, beer, or other exciseable liquors, by retail without licence, shall forfeit for the first offence 40s. with the costs of conviction, and it gives a summary form of conviction, which has been used in this instance here: That then followed the 9 Geo. III. c. 6. s. 2. which recites, that doubts had arisen whether the several penalties and forfeitures imposed by any act since the 8 Geo. II. relating to the selling of *spirituous liquors* by retail, without licence, might be inflicted and recovered, on persons thus offending; and then in order to put an end to such doubts, it enacts and declares, that all and every the penalties and forfeitures imposed by any act since the 8 Geo. II. (except the forfeiture of 100l. imposed 9 Geo. II. c. 23.) relating to the selling *spirituous liquors* by retail without licence, might have been and may be in future levied and recovered against such offenders, notwithstanding 5 Geo. III. c. 46. that this therefore was a legislative interpretation of 5 Geo. III. c. 46. by which it appears, that the 5 Geo. III. which was understood by many persons to operate as a repeal of, and commutation for, all former penalties for selling *spirituous liquors*,
was

was not intended to have that operation, and was only meant by the legislature to relate to ale, beer, or *other exciseable liquors*, of the same kind: That the distinction intended to be made in all the statutes on this subject is between *distilled spirituous liquors*, and other *exciseable liquors* not distilled: that as 5 Geo. III. c. 46. professes to be a *commutation for all former penalties and forfeitures* on which it was to attach, if the offender be liable to the penalties of the 5 Geo. III. he is exempt from all former penalties; that the legislature have expressly declared by 5 Geo. III. that the offence of which *Turner* was convicted, for selling by retail gin and rum, distilled spirituous liquors is not commuted for any penalty under 5 Geo. III. c. 46. that this conviction therefore, which was founded solely on 5 Geo. III. was bad, that this was a conviction in the penalty of 40s. whereas, if *Turner* had incurred any penalty, it was to a greater amount; for 26 Geo. II. c. 8. s. 9. inflicted a penalty of 10l. on persons selling by retail *distilled spirituous liquors* (this very offence) which is increased by 13 Geo. III. c. 56. s. 1. to 50l. under which statute the penalty can in no instance be mitigated below 5l. that, besides this conviction was also *for the costs* of it, which no other act authorizes the justices to give.

On the other side, in support of the conviction, it was contended as follows, by *Erskine*: This licence having been illegally granted, *Turner* was properly convicted, under the 5 Geo. III. c. 46. In order to make this subject clear, it is necessary

to state the several acts of parliament relating to this question, in the order in which they passed; from the whole of which it will appear that the legislature had two objects in view—the one *police* under the controul of the justices of the peace, the other of *revenue*, under the jurisdiction of the commissioners of excise; so that before any person can sell spirituous liquors by retail, he must procure a licence, as well from two justices of the peace, as from the commissioners of excise. The several statutes will be rendered more intelligible, by bearing in mind this distinction, as applied to the word “Licence.” When the legislature speak of a licence to sell *spirituous liquors, or distilled liquors*, they mean an excise licence; when they mention a licence to sell *ale, beer, or other exciseable liquors*, they mean a justice’s licence. The first act of parliament on this subject is the 2 Geo. II. c. 28. the tenth section of which enacts, that no person shall sell *brandy, or other distilled liquors*, by retail, but those who are licensed in the same manner as common alehouse-keepers, under such penalties and forfeitures as common alehouse-keepers are for selling drink without licence; and the same jurisdiction is given to justices of the peace, over such retailers of brandy, or other spirituous liquors, as they have over alehouse-keepers. The next statute is the 9 Geo. II. c. 23. §. 1. which, after reciting the inconveniencies that had arisen from the too frequent use of spirituous liquors, enacts, That no person shall sell any, brandy, rum, geneva, or other

other distilled spirituous liquors, or strong waters, in any less quantity than two gallons, without a licence for that purpose from the commissioners of excise, under the penalty of 100l. The tenth section then provides, that no licence shall be granted to any person to sell by retail any spirituous liquors, or strong waters, except to those who keep alehouses; and the fourteenth section provides, that no person shall (notwithstanding the above excise licence) sell any spirituous liquors, or strong waters, by retail, unless he be first licensed by two justices. Then followed the 16 Geo. II. c. 8. s. 8. which enacts, that no person shall sell, by retail, any brandy, rum, or other distilled spirituous liquors, without a licence from the commissioners of excise, under the penalty of 10l. with a similar proviso, that no licence shall be granted to any person but alehouse-keepers; and another proviso, that nothing shall be construed to enable any person to sell *spirituous liquors, or strong waters*, by retail, *unless he be first licensed by two justices, to sell ale, or spirituous liquors*; the next statute is the 29 Geo. II. c. 12. s. 22. which enacts, that the commissioners of the excise shall not grant any licence to retail spirituous liquors, or strong waters to any person who has not a licence to sell ale, beer, or other exciseable liquors; and then came the 5 Geo. III. c. 46. on which this conviction was founded. Now, in order to ascertain what was the intention of the legislature in passing it, it is necessary to see how the law stood before. *If a person retailed spirituous liquors with-*
out

out a licence from two justices, though he had an excise licence, he was liable to different penalties and punishments, under different acts: if he sold such liquors *without an excise licence*, he was liable to a forfeiture of 100l. and the several acts provided, that no excise licence should be granted to any person who had not a justice's licence to sell not only ale and beer, but other exciseable liquors; then the 5 Geo. III. c. 46. s. 22. recites, "That, by the laws then in force, *persons selling ale or beer, or other exciseable liquors, by retail, without licence*, were liable, by different laws, to different penalties and punishments, which had occasioned much confusion, &c." Now this confusion was not introduced by the several laws inflicting penalties for retailing spirituous liquors without an excise licence, but by those which required a *justice's licence* to sell ale, beer, or other exciseable liquors; the act then proceeds to inflict the penalties herein-before mentioned: soon after this statute was passed, it was doubted whether persons, having a justice's licence, could be convicted under former acts for retailing spirituous liquors, though they had not an excise licence, to remove which doubt, the 9 Geo. III. c. 6. was passed, and the second section of that act recites, that since the passing of 5 Geo. III. c. 46. it had been doubted whether the several penalties, imposed by any act since the 8 Geo. II. *relating to the selling spirituous liquors by retail without licence*, might be inflicted and recovered against any person for retailing spirituous liquors without licence."

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And then in order to put an end to such doubts, it proceeds to enact and declare, that penalties imposed by any act since the 8 Geo. II. *relating to the selling of spirituous liquors without licence*, (except the penalty of 100l. imposed by 9 Geo. III. c. 6.) made on this subject was, that in lieu of the penalties and other punishments, which might have been inflicted before that statute, *on persons retailing spirituous liquors without a justice's licence*, though they had an excise licence, the penalty of 40l. with the costs, was given; but that statute did not render it less necessary to have a justice's licence. And the excise licence since that act, only has the same operation that it had before, in case where no justice's licence has been granted. Before that statute, *the excise licence did not exempt a retailer of spirituous liquors, who had no licence from the justices*; neither does it exempt him, since that act, *from the penalty of 40s. given by it*. They are both still necessary. The argument on the other side would have applied, if *Turner* had been convicted of selling spirituous liquors without an excise licence, but is inapplicable to this case, where the offence imputed to him, is the retailing of spirituous liquors *without a licence from two justices*, though he had an excise licence.

By LORD KENYON, Ch. Jus. On hearing the argument against this conviction, I thought that the Stat. 9 Geo. III. c. 6. was a parliamentary exposition of the 5 Geo. III. c. 46. so as to exempt all persons, who sold spirituous liquors by retail, from the operation of the latter, on which
the

the conviction is founded ; but I am now clearly of a different opinion. On the argument urged in support of the conviction, it is evident there is a difference in the whole purview of these statutes, between the *justice's licence*, and the *licence from the excise*. The *Stat. 5 Geo. III. c. 46.* applies to all those instances where a licence for ale, beer, or other exciseable liquors, is required, and the conviction of the party offending against that act may be in the compendious form there pointed out, and adopted in that case ; and I am of opinion, that that statute remains in force, notwithstanding *9 Geo. III. c. 6.* as to all the objects of the licence, to be granted by the justices of the peace ; for the doubts which the legislature wished to remove, when they passed the *9 Geo. III.* were relative to the *excise licence* for retailing spirituous liquors.

ASHHURST, J. The principal question is involved in some intricacy ; but all the acts of parliament appear reconcileable, by considering that the statute of *5 Geo. III. c. 46.* solely and purely relates to licences granted by the justices of the peace, and not to licences granted by the excise ; but some doubts having arisen on the construction of this act, the *9 Geo. III.* was passed, not to repeal any part of the former act, but to declare, that the *5 Geo. III.* was not intended to, and did not, do away the operation of any of the former laws relating to the excise licences, and that they should remain in the same force as they did before the *5 Geo. III.* but with respect to justice's

licences, the 5 Geo. III. was intended to repeal all former penalties in their stead, and prescribing a general form of conviction.

BULLER, J. It is necessary that a person should have two licences to enable him to sell spirituous liquors, and therefore it is material to ascertain with precision, the terms which the legislature have used in speaking of both these; and when the terms are ascertained, there is an end to the question.— From the argument which has been argued in support of the conviction, it is clear, that when the legislature speaks of a licence to sell *ale, beer, or other exciseable liquors*, they mean a justice's licence; when they mention a licence to sell *spirituous liquors*, or *distilled liquors*, they mean, an *excise licence*. If so, the licence to sell ale, beer, or other exciseable liquors, mentioned in 5 Geo. III. means a licence by the justices; and 9 Geo. III. which speaks of licences to sell spirituous liquors, leaves the justice's licence untouched, and only declares that the legislature did not intend, in passing 5 Geo. III. to interfere with the excise licences, and consequently the penalty of 40 shillings given by 5 Geo. III. attaches no persons who retail spirituous liquors without a licence from the justices.

GROSE, J. This conviction may be supported under the 5 Geo. III. c. 46. for the 9 Geo. III. enacts and declares that, all penalties imposed on persons retailing spirituous liquors without licence, might have been, notwithstanding the 5 Geo. III. and may (except as hereinafter mentioned), for the future, be recovered, &c. This seems to me to be

be a declaratory law, saying, that the excise licences were to remain as they did before that act, and that the only alteration, which the 5 Geo. III. c. 46. made, with respect to the licences granted by the justices, and this is confirmed by the subsequent proviso, which says, that all the powers and authorities by the former acts to the justices of the peace and the commissioners of excise respectively given, of transporting or whipping persons convicted of retailing spirituous liquors without licence, shall cease and be no longer put in force. Now that proviso directly points to the powers which the magistrates had relative to the licences for selling spirituous liquors. Therefore it is clear, that the statute, 9 Geo. III. c. 6. did not mean to interfere with the justices licences; and the distinction which has been taken, between the licences by the justices, and the licences by the commissioners of excise, as applied to these acts of parliament, renders the question more clear.—*The Order of Sessions quashed, and the conviction affirmed. 3 Term. Reports. 500.* As the above case contains a full exposition of this part of 5 Geo. III. it is thought proper to give it at large, and in the words of the reporters, together with the arguments of council, and the opinions of the judges.

SECTION V.

Concerning the Penalties for retailing Spirituous Liquors without an Excise Licence.

BY 9 Geo. III. c. 23. It shall be lawful for any justice

*The excise
officer's entry
made evi-
dence of re-
tailing.*

justice of peace to call before him any excise officer, within their respective divisions, and to examine the said officer upon oath, touching the entry of any spirituous liquors, ale, beer, cyder, or perry, made by any person suspected to sell the same without licence; and every person making such entry shall be deemed a feller of such liquors. *f. 20.*

By the same act, *f. 13.* No persons shall sell spirituous liquors about the streets, or fields, or on any bulk or stall, or in any shed or other place (other than in places allowed) upon pain of forfeiting 10*l.* and on such offender's

*Penalty on
retailing in
streets or fields
&c.*

neglecting to pay upon conviction, the justice may by warrant commit him to the house of correction to be kept to hard labour for 2 months.

Justices may by warrant apprehend such hawkers without previous summons, *f. 4.* and it is lawful for any person to seize and detain any person who shall hawk, sell, or expose to sale, any brandy, or strong waters, about the streets, highways, or fields, in any wheel-barrow, basket, &c. *f. 5.* And if any persons, to the number of five, shall in a tumultuous and riotous manner assemble, and rescue any offender against 9 *Geo. II.* or any other act relating to spirituous liquors it is felony, and such rescuers may be on conviction transported for seven years.

If any less quantity than two gallons of spirituous

tuous liquors, mixed or unmixed, shall be sold in any private manner, in any house, or other place belonging to any house, the occupier of such house or place, if but one occupier, and if more than one, then the several occupiers, being privy or consenting thereto, shall be deemed the retailers, and forfeit as for selling without licence. 9 Geo. II. s. 1.

*Occupiers of
houses where
liquors sold
deemed re-
tailers.*

By 16 Geo. II. c. 8. If any person retail without a licence, he shall forfeit 10*l*. and on non-payment when demanded, one justice, on oath of such neglect, shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid.

*Penalties of
selling spiri-
tuous liquors
without li-
cence.*

Stat. 2 Geo. II. c. 40. s. 11.—26 Geo. II. c. 13. s. 8. And the said penalty shall in no case be mitigated below the sum of 5*l*.

Also by 30. Geo. III. c. 38. s. 10. It is enacted, that no person shall retail any foreign wines, of any distilled liquors or strong waters, after the expiration of his licence, unless such person shall take out a fresh licence for the like purpose, ten days before the expiration of the former; and if any person shall retail any foreign wine or any distilled spirituous liquors, or strong waters without first taking out a licence, authorising him so to do, and renewing the same as before directed, he shall forfeit 50*l*. s. 9. to be recovered and mitigated by law of excise, or by action, &c. in any of the courts at *Westminster*; one moiety whereof shall

shall be to the king, and the other to him that will sue. *f.* 16.

If any person not authorized by law, retail any liquors, he shall not only be subject to the penalties now in being for such offence, but all the distilled spirituous liquors then, or at any time *within* six calendar months after conviction for such offence, found in his custody, or in the house where such offence was committed, or any place occupied therewith, whether then in the occupation of such offender or not, shall be seized by warrant of the said commissioners, or of any justice of peace within their respective jurisdictions, and the same shall forthwith be cleared or destroyed, for which purpose any peace or parish officer authorized by such warrant, shall have power at any time within six months after conviction to enter such places, and break open doors, if not opened on demand; and if any person convicted of any such offence, shall again offend in like manner, and be convicted, it shall be lawful for the commissioners or justices, before whom such offender is convicted of such subsequent offence, as well to inflict the penalties by any former law inflicted, as also to commit such offender to the house of correction, to be kept to hard labour for any time not exceeding three months. *f.* 9.

Commissioners of excise, and justices of peace, may, upon oath of any offence against this act, grant their warrant to any of the peace officers, or
other

*Forfeiture of
spirituous li-
quors found in
the possession of
unlicensed re-
tailers.*

other parish officers where such offence is sworn to be committed, to enter and search the house and other places where such offence is sworn to be committed: and such officers are authorized to break open the door, in case they are not opened on demand, and seize such distilled spirituous liquors as they find. *f. 10.*

All fines and forfeitures, imposed by this or any other act relating to the duties of excise, shall be recovered or mitigated, as by any law of excise, (and not otherwise directed by this act) or by action of debt, &c. in any court of record at *Westminster*, and one moiety shall be to his majesty, and the other moiety to him who shall inform or sue. *f. 29.*

*Penalties,
how recover-
able.*

The acts are not to extend to any physicians, apothecaries, surgeons, or chymists, as to any spirituous liquors which they may use in the making up of medicines for sick, lame, or distempered persons only. *9 Geo. II. c. 23. f. 12. and 16 Geo. II. c. 8. f. 12.*

Exceptions.

In the case of *the king* against *Crofts*, on a conviction on *9 Geo. II. c. 23.* for selling gin, it appeared, that the defendant was a *feme-covert*, and it was therefore objected that as she could make no contract; it must be taken to be her husband's sale; or if she could be convicted he ought to have been joined for conformity. On the other side, in support of the conviction, it was insisted, that when the crime is of such a nature as can be committed by her alone, she may be indicted

*A feme-
covert may be
convicted.*

without her husband; which being a proceeding grounded merely on the breach of the law, he shall not be included, unless privy.

And by the Court, We think the conviction is right; for this is not like the cases that found only in damages, and though she cannot have the benefit of the contract, yet, she as well as a servant, may do the act of vending. Besides there would be a plain way to evade the act, if *feme-coverts* could not be convicted. *Strang. Rep.* 1120. 1121.

SECTION VI.

How Alehouses may be suppressed—And of the Forfeiture of Recognizance.

BY the 5 and 6 Ed. VI. c. 25. The justices of the peace, within every shire, city, borough, town corporate, franchise, or liberty, within this realm, or two of them at least (1 *Quo.*) shall have full power and authority, within every shire, to remove, discharge, and put away common selling of ale and beer, in common alehouses, and tippling-houses, *s.* 1.

There is a difference between suppressing an *unlicensed alehouse*, and one that *is licensed*; where an alehouse is licensed, the justices, to suppress it, must either proceed upon the recognizance, the condition whereof must at least be taken; and therefore, the having another trade, or being a bailiff, can be no cause in such case, or by indictment; and then there must be such disorders as prove a nuisance. 1 *Salk.* 45. For

For the sessions cannot suppress an alehouse licensed by two justices of the peace, except it is for disorders committed.—Per HOLT, Ch. J. in the case of *The King v. Randall*. 1 *Salk.* 470. 3 *Salk.* 27.

But where an alehouse is suppressed by indictment, as a common nuisance, it is as to the person, not the house, for that may be licensed to a better man. *Liutton's Rep.* 100.

And it seems to have been the general opinion in the construction of this clause, that an alehouse-keeper, suppressed in pursuance of it, cannot be afterwards licensed again, but in open sessions. 1 *Hawk.* 8vo. edit. 545.

But when an alehouse is unlicensed, the justices may suppress it at discretion; for, on the denial of a licence, no appeal lies, and the statute, which gives the justices power to suppress where they think convenient, would signify nothing, if it did not extend to such cases; for it cannot extend to alehouses that are licensed, because they are not punishable, without a breach of the recognizance; and as to those that are unlicensed, if they are suppressed by the conviction of the owner, the want of a licence can only come in question, and not the reason and cause why it was denied. *Salk.* 45.

By 5 and 6 *Ed. VI.* 25. *f.* 3. The justices shall have power in their quarter-sessions, by presentment, information, *Process on recognizance,* or otherwise by their discretion, to inquire of all such persons as shall be admitted and

and allowed to keep any alehouse or tipling-house, and that be so *bound by recognizance*, if they have done any act whereby they have forfeited the same recognizance; and they shall, upon such presentment or information, award process against every such person so presented or complained of before them, to shew why he should not forfeit his recognizance; and shall have power to hear and determine the same, by all such ways as by their discretion shall be thought good.

And on complaint of breach of recognizance, any justice may summon the offender and witnesses to the sessions, when the recognizance may be estreated: and if the person complained of be convicted of having done any act, whereby the condition of his recognizance is broken, the court may adjudge such person guilty of the breach, and thereupon the justices shall order the recognizance to be estreated, and the person shall be disqualified to sell any ale, beer, cyder, spirituous liquors, or strong waters, for three years, *f. 7.*

Any person disabled by conviction to sell ale, beer, cyder, perry, is also disabled by such conviction to sell spirituous liquors; and every licence granted from the time of conviction is void; and every person selling ale, beer, cyder, perry, or spirituous liquors, during such disability, is subject to the penalties for selling without licence; and, in all prosecutions, a certificate from the clerk of the peace, of any such conviction,

tion, shall be evidence, which certificate such clerk may grant without fee, *f. 11.*

SECTION VII.

Alehouses must be licensed, and Recognizances entered into to preserve order therein.

By the 5 and 6 *Ed. VI. cap. 25.* none shall be suffered to keep, any common ale-house, but such as shall be allowed thereunto in open sessions, or else by two justices, (*one of the quorum.*)

How licences are to be granted.

In the case of *the King* against *Sir John Powel Price, Bart.* The defendant had convicted a woman of selling ale in New Town, Montgomeryshire, without a *licence*, though she had a *licence* granted by two justices (both living out of the division, one of them, till on this occasion never acting before, and the other only occasionally, and in a few instances,) at a meeting which the defendant and another justice of the division had appointed, but at which neither of them attended. The two justices, who came for that purpose, proceeded to business without the justices of the division, and granted licences to this woman and others: previous to the conviction, the defendant took the opinion of *Sir Fletcher Norton*, who said the licence was void, as not granted by two justices acting in the division. The woman being convicted, applied to the court for an information, which was granted; and the defendant was convicted at *Sbrewsbury* summer assizes, 1771, before *Leigh*, serjeant

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Any person disabled by conviction to sell ale, beer, cyder, perry, is also disabled by such conviction to sell spirituous liquors; and every licence granted from the time of conviction is void; and every person selling ale, beer, cyder, perry, or spirituous liquors, during such disability, is subject to the penalties for selling without licence; and, in all prosecutions, a certificate from the clerk of the peace, of any such conviction,

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serjeant, judge of the assize. A new trial was moved for on two grounds, *first*, that the defendant having taken the opinion of counsel, under whose advice he had proceeded, could not be said to have acted maliciously; and if erroneously only, could not be criminal. *Secondly*, That he acted legally, the licence being absolutely void, not having been granted by two justices acting in the division. The *Serjeant* who tried the case, reported against him upon the first ground, and that thro' evidence of malice; and the court thought the licence granted by the justices, though not those who generally acted in that division, was legal, for, per *Aston*, Just. any justice of the county going to the meeting in the division is for this purpose a justice of the division. *Caldecot's Cases*, 305.

By *stat. 26. Geo. II. c. 31.* No licence to keep

When licences are to be granted, and how long to remain in force.

a common inn or ale-house, or to retail any brandy or strong waters, shall be granted, but on the first day of September yearly, or within 20 days after, and such licence shall be made for one year only, to commence on the 29th of September, and the day and place for granting such licences shall be appointed by two, or more of the justices for the division, by warrant under their hands and seals, at least ten days before such meeting, directed to the high constable of the division, requiring him to order his petty constables, to give notice to the inn-keepers and ale-house-keepers within their constablewick, of the day and place of meeting, and all

all licences granted at any other time or place shall be void. *f.* 4. But this shall not extend to alter the time of granting such licences in any city or town corporate. *f.* 16.

This last *proviso* only extends to the *time* or *times* of granting the licences in those particular districts, namely, *cities*, or *towns-corporate*.

Except as to the time, all the regulations in granting licence: in cities of the 26 G. II. must be complied with.

In the case of *the King* against *Downs* and another, where one *Turner* was convicted under 5 Geo. III. c. 46. of selling gin without a licence; it appeared he did not apply at the *general licensing day*, but had been *licensed after the general meeting*, by two justices, by whom no warrant for the appointment of a meeting had been issued; it was contended that the power of granting licences in cities or towns-corporate, remains as it did under the 5 and 6 Edw. VI. c. 25. and that the exception in 26 Geo. II. c. 31. *f.* 16. intended that the statutes should not alter *the method*, or *the power*, or *the time* of granting licences in those places. But by Lord *Kenyon*, Ch. Just. all the regulations prescribed by the 26 Geo. II. c. 31. must be complied with, and the *proviso* only extends to the time or times of granting the licences, such is the construction which the very words of the exception express; and which is a construction highly advantageous to the public, that licences of this sort should be granted *openly*, and not *by stealth*, in order that they may have an opportunity of objecting to the granting of these licences to particular

ticular persons on the ground of unfitness; inasmuch therefore, as the regulations of that statute, were not complied with in this instance, this licence having been granted at a *private meeting* of two justices, which was holden too *after the general meeting* was passed; I am of opinion that the licence is illegal, and that it cannot protect the person to whom it was granted from the penalties of 5 Geo. III. c. 46. and the present form of conviction may be supported. *Alshurst*, Just. I entirely concur in the opinion which has been given by my lord: I think it would be a most mischievous exposition of 26 Geo. II. to say that justices of the peace in such places as fall within the meaning of the exception might grant licences *privately*, and without giving any public notice of their intention to grant licences on *any particular day*, for, though perhaps it was not necessary that such magistrates should be limited to *the time* mentioned in the act for granting licences; yet, as the public are so much interested in the subject, the legislature thought it proper to include *all places* in the general provisions of the act, so that *in no place whatever can the justices grant a licence but at a public meeting, though in places within the exception of the act; the time of that meeting is not confined to the 20 first days of September.* *Buller*, Just. concurred, and said, on the fair construction of the *proviso* it appears, that the legislators did not wish to interfere with *cities and towns-corporate*, which are governed by regulations of their own, *as to the time* of granting licences. *Grose*, Just. The

The magistrates must pursue the regulations of 26 Geo. II. except *as to the time* of granting such licences: And the objection to this licence is not to *the time*, but to *the manner* and place in which it was granted. The conviction was therefore affirmed. 3 Term. Rep. 569.

And by stat. 26 Geo. II. c. 13. No justice being a common brewer of ale or beer, *What justices are re-* inn-keeper or distiller, or other seller *strained li-* of, or dealer in ale, or any kind of *censed.* spirituous liquors, or instructed in any of such trades, or being a victualler or malster, shall be capable to grant any licence to any person whatever, for selling ale, beer, or any other liquors by retail, and in case such justice shall grant any such licence, the same shall be void. *f. 12.*

If any person licensed, shall die or remove from the alehouse, &c. the executors, administrators, or assigns of such person, who shall be possessed of such a house, or the occupier thereof, may sell ale, beer, or other spirituous liquors therein, during the residence of the licence, without certificate, or new licence, notwithstanding 26 Geo. II. c. 31. or any other law. *Case of the licensed person dying, removing, or the house becoming empty.*

By stat. 29 Geo. II. c. 12. *f. 6.* "Every person, who shall retail ale, or other exciseable liquors, in any prison or workhouse, shall be deemed a keeper of a common alehouse, and shall be subject to the penalties, unless he obtains a licence." *Retailers of ale in prison and workhouses to be licensed.*

For

For selling ale, or other exciseable liquors, by retail, there shall be paid, for every piece of vellum or parchment, upon which shall be written any licence—By stat. 9 *Ann*, cap. 23,

Duty on ale licences granted by the justices.

s. 23. one shilling—by 29 *Geo.* II. c. 12. *s.* 1. one pound—and by 24 *Geo.* III. c. 30. *s.* 2. ten shillings and six-pence; in the whole, 1l. 11s. 6d.

The legislature, in imposing the necessity of these licences, had two objects in view; the first of *police*, which presented itself at a very early period; the other of *revenue*, which

What licences originated first from.

is of a very late date.

The inconveniences arising to the public, from the unrestrained exercise of a business, which, under the best management, has a tendency to encourage idleness, and produce disorder, was felt and acknowledged so far back as in the reign of Hen. VII. for about that time an act passed, empowering two justices to lessen the number of alehouses; and in the 5 and 6 *Ed.* VI. it was provided, that none should keep any alehouse but such as should be allowed by two justices. This was clearly a regulation of *police*, and the justices of peace in their respective counties were very properly vested with the sole power of determining what houses were necessary to be licensed, and what persons fit to keep them, being deemed from their residence and local knowledge, most competent to discriminate in such matters. This

Police.

power remained in the justices as a mere regulation of *police*, from that

that time till about the reign of *Geo. II.* and prior to that period a licence from the justices, solely, and of itself, authorised the sale not only of ale and beer, but of brandy, and all kinds of spirituous liquors.

These houses now became objects to the public revenue, and the legislature having imposed certain duties upon licences to retail spirits, the power vested in the justices, or at least the operation and extent of their licences, even in some degree was altered or controlled.

*Secondly,
public revenue*

The 16 *Geo. II.* and other subsequent acts, enact, that no person shall retail spirituous liquors, unless such person has previously obtained a licence from the commissioners of excise;—the justices' licence alone and of itself, will not therefore now empower a person to retail spirits, and its original extent and operation is consequently so far abridged and controlled;—but the legislature still cautious to prevent an improper increase of public-houses, have absolutely restrained the commissioners of excise from granting any such licences, unless the party has been previously licensed by the justices to keep an ale-house.—Thus the powers of the justices, and the commissioners of excise, to grant licences to retail spirits seem at present to be in a measure distinct and different; though the licence of the one, as to the retailing of spirits, cannot exist or be of any use without the other,

By

By stat. 30 Geo. III. c. 38. "Every person who shall retail distilled spirituous liquors or strong waters, shall take out a licence, if within the limits of the chief office in *London*, under the hands and seals of two commissioners of excise, or person by them appointed; but if not within the limits, under the hands and seals of the collectors and supervisors within their districts; and such licences are to be granted to the persons who apply for the same, on their first paying for such licences."

The Duty of Licences is as follows;

If the dwelling house in which such person shall reside, or retail such liquors, shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the act *for imposing a duty on houses*, at 15*l.* per ann. or upwards,

	£.	s.	d.
If rated at 15 <i>l.</i> per ann. and under 20 <i>l.</i>	4	14	0
If rated at 20 <i>l.</i> per ann. and under 25 <i>l.</i>	5	2	0
If rated at 25 <i>l.</i> per ann. and under 30 <i>l.</i>	5	10	0
If rated at 30 <i>l.</i> per ann. and under 40 <i>l.</i>	5	18	0
If rated at 40 <i>l.</i> per ann. and under 50 <i>l.</i>	6	6	0
If rated at 50 <i>l.</i> per ann. and under 60 <i>l.</i>	6	14	0
If rated at 60 <i>l.</i> per ann. or upwards	7	2	0

By stat Geo. II. c. 8. No person shall be enabled to sell any spirituous liquors by retail, unless he be first licensed to sell ale or spirituous liquors, by two or more justices for the county, or liberty wherein he sells the said liquors, under the hands and seals of the said justices. *f. 11.*

No person to
retail spirits
unless he be
first licensed
to sell ale.

For

For which licence 2s. 6d. shall be paid to the clerks of such justices, and no fee whatsoever to the clerk of the peace, for entering the same, or any other account, on pain of forfeiting 5l. in case any of the said justices' clerks, or clerk of the peace, shall demand any other fee; and if the licence is not found by the justices' clerks, no fee shall be due." 9 Geo. II. c. 23. *f. 14. to be recovered by action in any court of record at Westminster, or by indictment at the assizes, or at the general or quarter sessions of the county where the offence is committed, for the use of the person who sues.* 24 Geo. II. c. 40. *f. 25.*

The fee to be paid for the same.

By *stat. 16. Geo. II. c. 8.* "No licence shall be granted to any person for selling by retail any spirituous liquors, except to such who keep taverns, victualling houses, inns, coffee-houses, or ale-houses, and licences granted to any other persons shall be void. *f. 10.*

To whom licences are to be granted.

By *stat. 4. 2 Geo. II. c. 40. f. 8.* No licence for selling by retail spirituous liquors, shall be granted within the limits of the head office of excise in London, but to such as shall occupy a tenement of the yearly value of 10l. and for which they shall be rated and pay in the parish rates; nor to any person in any other part of the kingdom, where there are rates to the church and poor, but to such as shall be assessed and pay to the church and poor in the parishes in

Persons licensed to sell spirits must occupy a house of 10l. per annum.

s. d.
14 0
2 0
10 0
18 0
6 0
14 0
2 0
enabled
retail,
ale or
r more
liberty
rs, un-
f. 11.
For

in which they are licensed, and no licence shall be of any avail to any person not so qualified, or for any longer time than the person so licensed shall be qualified, but shall be void.

By the same act 30 Geo. c. 38. s. 1. Every person who shall retail *foreign* wine, shall in like manner take out an excise licence *annually*, first paying

*Duties on the
foreign wine
licence,*

For every licence which shall be granted to authorize any person to retail *foreign* wine in England, and who shall not have an excise licence for retailing distilled spirituous liquors, or a licence for retailing ale, beer, &c.

£. s. d.
5 4 0

———— To any person who shall take out a licence for retailing beer, &c. but shall not have an excise licence for retailing of distilled spirituous liquors

4 4 0

———— To any person who shall also have an excise licence for retailing distilled spirituous liquors

2 4 0

By stat. 32. Geo. II. c. 19. s. 3. "No person licensed to retail wine shall, by virtue of one licence, keep more than one place for selling wine by retail; and every retailer of wine shall cause the word WINE to be written either on a sign hung out, or in some visible place in or near the door in the front of his house, to denote such retailer is a dealer in wine, and subject to take out a licence for retailing, and if any person sell wine by retail without such token, he shall forfeit 10

to be recovered as the penalty on persons selling wine by retail without licence, subject to the like power of mitigation as is thereby prescribed."

And by the same act of 30 Geo. III. c. 38. s. 1.

Every person who shall *retail British made wines*, or *sweets*, shall in like manner take out an excise licence *annually*, first paying for the same the sum of 2*l.* 4*s.*

Duty on licence to retail sweets.

Ale licences to be granted to retail *foreign wines*, or *distilled spirituous liquors*, shall continue in force until 10th *October* next

How long wine and brandy licences remain in force.

ensuing the time of granting thereof, and no longer; but where any licence shall be first granted between 5th of *April* and 10th of *October*, in any year, there shall be charged only a proportion of the above duties, according to the time for which such licence shall be granted. 30 Geo. III. c. 38. s. 8.

"No person shall retail any wine, sweets, or distilled spirituous liquors, after the expiration of such licence, unless such person shall take out a fresh licence ten days before the expiration of the former." 30 Geo. III. c. 38. s. 9.

Wine and brandy licences to be renewed ten days before the expiration of the former.

If a victualler sells tobacco he must, by 29 Geo. III. c. 68. s. 1. annually take out a like excise licence and pay the following duty; namely:

Tobacco licence.

Five shillings for such licence to authorize him to deal in tobacco, within the limits of the chief office

office of excise in *London*, and *two shillings and sixpence* in any other part of *England*. And the words *dealer in tobacco* are directed to be written or painted over the outer door of the house, on pain of 50*l.* s. 62.

Stat. 7 and 8 *W.* III. c. 30. If any inn-keeper or victualler shall, on request or demand made by the gauger, in the day time, or in the night, *in the presence of a constable*, refuse to permit him to come into his house, or other place used by him; or being entered, shall refuse him to stay there, he shall forfeit 20*l.*

By *stat.* 15 *Char.* II. c. 11. s. 16. No person shall bribe or give any reward to *Bribing gauger.* any officer to make any false return, or to forbear the doing his employment, upon penalty of 10*l.* for every offence; and no other officer shall receive any reward of any person for any other matter relating to the excise, upon penalty, that every such officer shall forfeit 10*l.* which offences shall be proved by two witnesses, before two justices of peace, or chief magistrate of the place, which have power to determine the same, and to cause such penalties, by warrant to be levied by distress and sale of goods, and for want of such distress to commit such offender to the common goal for the space of three months.

By *stat.* 22 and 23 *Car.* II. c. 5. s. 11. No retailer of beer or ale shall, after the receipt from the common brewer mix any beer, ale or worts, of ex
Mixing by the retailer thereof. traordinary

traordinary strength with any small beer, ale or wort, in any vessel containing three gallons or more, on pain of forfeiting for every barrel so mixed, double the duty of excise for strong beer or ale, and so proportionably for any greater quantity.

Stat. 1 Will. III. sess. 1. c. 24. s. 16.—12 and 13 Will. III. c. 11. s. 17. No infor-

mation shall be brought against any alehouse-keeper for any misentry or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling-house within a week after laying and entering the information.

*Limitation
of information
against Pub-
licans.*

By 26 Geo. II. c. 31. s. 2. "No licence shall be granted to any person not licensed the

year preceding, unless such person produce at the general meeting of justices in September, a certificate un-der the hands of the parson, vicar, or curate, and the major part of the churchwardens and overseers, or else of three or four house-holders of reputable and substantial characters, setting forth, that such person is of good fame, and of sober life and conversation, and it shall be mentioned in such licence, that such certificate was produced, otherwise it shall be void."

*A certifi-
cate of good
character to
be produced.*

But this shall not extend to oblige persons not licensed the year preceding to produce certificates, in any city or town-corporate. s. 19.

*Except in ci-
ties and towns
corporate.*

D

By

By *stat.* 5 and 6 *Edw.* VI. *c.* 25. *f.* 1. "The
Persons tak- said justices, or two of them, (*1 Quer.*)
ing out licen- shall take bond and surety from time
ces to enter in to time, by *recognizance* of such as
recognizance. shall be admitted to keep any com-
 mon ale-house or tipling-house, as well against
 the using of unlawful games, as also for the
 maintenance of good order and rule, as by their
 discretion shall be thought necessary, for making
 which *recognizance*, the party bound shall pay but
 12*d.*

And by *stat.* 26. *Geo.* II. *c.* 31. *f.* 1. Upon
 granting licenses by justices to any person to keep
 an ale-house, inn, victualing-house, or to sell ale,
 beer, or other liquors by retail, such person shall
 enter into a recognizance to the *King* in 10*l.* with
 two sureties, each in 5*l.* or one in 10*l.* under the
 usual condition, for maintenance of good order:
 and in case the person applying for such licence be
 hindered through sickness or infirmity, or other
 reasonable cause, to be allowed by the justices, to
 attend in person at the meeting of the justices for
 granting licences; it shall be lawful for them to
 grant such licence, upon two sureties entering
 in such *recognizance*, each in the penalty of 10*l.*
 which said recognizance, with the condition
 thereof, fairly written or printed, shall forthwith,
 or at the next general or quarter-sessions at farthest
 be returned to the clerks of the peace, under the
 hands of the justices before whom taken, to be by
 the said clerks of the peace filed among the re-
 cords of the sessions; and for every licence granted
 without

without taking such recognizance, and every recognizance taken and not returned, every justice fining such licence shall forfeit 3l. 6s. 8d.

It is discretionary in the justices whom they will licence, and a mandamus will not lie to compel the justices to licence any person; and on conviction for selling without licence, the want of such licence can only come in question, and not the reason why it was denied. *Strange, 88 i.*

Whether a mandamus will lie to compel the justices to grant a licence.

So in the case of *the King* against the Justices of the Peace of *Worcester*, *M. 4. Geo. II.* a mandamus was moved for to be directed to them, to grant a licence to a victualler to sell ale. Affidavits were offered to be produced of the justices declaring, that they would grant no licences to any of the inhabitants who signed a petition to the parliament for erecting a workhouse there; and that the person on whose behalf the motion was now made, had been a victualler in the town for above 35 years. The Court said, that they never knew a motion of this sort granted; but if there was such a grievance as is mentioned, another sort of motion would be more proper. *1 Barnardist. 402.*

In the case of *the King* against *Young and Pitts*, *E. 31. Geo. II.* a motion was made for an information against these two justices, for arbitrarily, obstinately, and unreasonably refusing to grant a licence to one *Henry Day* to keep an inn at *Eversey, Wilts.*

Whether an information will lie.

On shewing cause, it was insisted, that the legislature has made the justices the sole judges; as being such who, from their residence on the spot, must best know the persons and their characters, and the circumstances of the place. And the legislature has even excluded the justices of other divisions. And the justices thus intrusted have a right to judge for themselves. No man can judge for another. And this power is intrusted to them by the constitution, and by the legislature. It may be very dangerous to them to be obliged to give their reasons publicly; though they may have very sufficient ones to satisfy their own minds, and to direct their own judgments. And if they are thus intrusted, why are they liable to be called to account by any other jurisdiction, unless they act faultily and wilfully wrong?—Indeed, if they do wilfully wrong, let them be punished; but where they act conscientiously, they are not accountable to any body. By Lord *Mansfield*, Ch. J. it is certain, this court has no power or claim, to review the reasons of justices of the peace, upon which they form their judgments in granting licences, by way of appeal from their judgment, or overruling the discretion intrusted to them; but if it clearly appears that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have consequently abused the trust reposed in them, they are liable to prosecution by indictment or information; or even possibly by action, if the malice be very gross

gross and injurious. If their judgment is wrong, yet their heart and intention pure, God forbid they should be punished: And he declared he should always lean towards favouring them, unless partiality, corruption, or malice shall clearly appear. And having gone through all the particulars both of the charge and the defence, he concluded with declaring it as his opinion, that there was no sufficient ground for a criminal charge against these justices. And by the Court unanimously, the rule was discharged with costs. *Burrow. Mansfield. 556.*

M. 32. Geo. II. K. and Albay. On shewing cause why a rule should not be made absolute, for an information against a justice for a misdemeanour in refusing to grant a licence to one *Francis Symes*, (who had been licenced for several preceding years) to sell ale, as usual; and afterwards convicting him, without any previous summons, for having sold it without a licence; it appeared, that the pretended grounds upon which this rule had been applied for and obtained, were either false or fallacious. The first was, that the only reason why the licence was refused him was, his declining to pay a sum of money (*viz. 5l.*) which was claimed of him upon a distinct and collateral account, and which he denied to be due from him; the payment of which sum of money was (as he alledged) insisted upon by the justice, as a condition precedent to his granting the man a licence. The second pretended ground of the motion was, that the justice had convicted him of

the offence, without any previous summons. As to the *first* the Court were unanimous, that the allegation appeared to be false in fact; but at the same time they declared explicitly, that the judges have no sort of authority to annex any such conditions to the granting these licences. As to the *second*; they esteemed it to be fallacious, as the fact came out upon shewing cause; for the man was actually present before the justice (who had sent for him) and was so far from offering to make any defence, that he seemed rather to apply for mercy; declaring, however, that if the justice did convict him, he would not pay the penalty. *Thirdly*, the Court observed, that the man had not any where alledged, that he was innocent of the offence, which they thought incumbent upon him to have done, to intitle him to make this application against the justice. And the rule to shew cause was discharged. *Burrows. Mansfield.* 653.

E. 2. G. 3. K. v. Williams and Davis. An information was granted against the defendants, as justices of the peace for the borough of *Penryn*, for refusing to grant licences to those ale-house-keepers who voted against their recommendation of candidates for members of parliament for that borough. It appeared that they had acted very grossly in this matter, having previously threatened to ruin these people, by not granting them licences, in case they should vote against those candidates whose interest these justices espoused; and afterward actually refusing them licences, upon
this

this account only. And Lord *Mansfield* declared, that the Court granted this information against the justices, not for the mere refusing to grant the licences (which they had a discretion to grant or refuse as they thought proper) but for the corrupt motive of such refusal, for their oppressive and unjust refusing to grant them, because the persons applying for them would not give their votes for members of parliament as the justices would have had them. *Burr. Mansf.* 1317.

T. 5. G. 3. *K. v. Hann and Price*, justices of the peace for the borough of *Corse Castle*. On shewing cause against an information which had been prayed for against them, for a misdemeanor in the execution of their office, in refusing to grant a licence to sell ale to one *Ingram*, an inn-keeper in that borough, merely from a motive of resentment against him, for having espoused an opposite interest in the election for members of that borough; the defence was, that they did not act from any resentment or corrupt motive, but solely because *Ingram* was an improper person, and had kept a disorderly house, and continued to keep it after full notice to the contrary, and in particular that he encouraged gaming and cock-fighting at his house. By Lord *Mansfield*, Ch. J. The Court should never interpose against magistrates, unless they have acted from bad motives and *mala fide*; especially in such a case as this, when they are intrusted with an absolute discretion: but for that very reason, this is the strongest case for the interposition of the Court,

if it appears that they have acted upon corrupt motives. If it did appear clearly that this man kept a disorderly house, it would be a reason against the Courts interposing against the justices. But this does not clearly appear. And upon the whole he thought, on a full discussion of the affidavits, that the charge upon the justices was not satisfactorily answered by them. And he declared it to be of very dangerous consequence to permit the due discretion of the justices to be influenced by considerations of this kind. The Court thought it a proper case for an information, and made the rule absolute.

Afterwards, *M. 6. G. III.* The justices confessing themselves guilty of the information, it was moved for a rule to dispense with their personal appearance, on the undertaking of their clerk in Court to answer for their fines. But the Court in full debate were unanimous in refusing the motion. The general doctrine laid down by the Court was, that though such a motion was subject to the discretion of the Court, either to grant or refuse it, where it was clear and certain that the punishment would not be corporal. And this, for the example sake, as the notoriety of their being called up might deter others from the like offences. And finally, upon their appearance in Court, the sentence was, that they should be committed for a month, fined 50*l.* each, and imprisoned until the fine be paid. *Burr, Mansf. 1716. 1786.*

By

By 26 Geo. II. c. 31. s. 3. No licence shall entitle any person to keep an alehouse in any other place than that in which it was first kept, and such licence, as to all other places, shall be void.

*Licence not good
for any other
house than that
for which it was
granted.*

SECTION VII.

Concerning Tipling and Drunkenness.

BY Stat. 1 Jac. I. c. 9. s. 2. If any inn-keeper or alehouse-keeper (or the keeper of taverns, and such as do sell wine in their houses, and do also keep inns, or victualling in their houses. 1 Car. I. c. 4. s. 2.) shall permit any person dwelling, (or not dwelling 1 Car. I.

*Alehouse-keepers
permitting per-
sons to remain
tipling in their
houses to forfeit
10s.*

c. 4. s. 1.) in any city, town corporate, market town, village or hamlet, where such inn, alehouse or tipling house is, to remain drinking or tipling in the said inn (other than such as shall be invited by any traveller, and shall accompany him only during his abode there, and other than labouring and handicraft men in cities and towns corporate, and market towns, upon the usual working days for one hour at dinner time, to take their diet in an alehouse, and other than labourers and workmen, which for the following of their work by the day, and by the great, in any city, &c. in any inn, &c. and other than for urgent occasions, to be al-

lowed by two justices;) every such inn-keeper, victualler, &c, shall forfeit 10s. to the poor; the offence being viewed by any mayor, bailiff or justice, (or proved by the oath of one witness, or confession of the person offending. 21 Jac. I. c. 7. s. 1.)

And if any alehouse-keeper shall be convicted under 1 Jac. I. c. 9. s. 1. For suffering any person inhabiting in any city, &c. where such inn, &c. shall be, to continue tipling therein, such alehouse-keeper so corrected, shall also for three years be disabled to keep any alehouse. 21 Jac. I. c. 7. s. 4.

And all constables, churchwardens, headboroughs, tythingmen, aleconners, and sidesmen, shall in their oaths, incident to their offices, be charged to present offences. 4 Jac. I. c. 5. s. 7. and 21 Jac. I. c. 7. s. 5.

The penalties to be levied by the constables, or churchwardens by distress, and for default of satisfaction within six days, to be appraised and sold, and the surplusage to be delivered to the party; and for want of sufficient distress, the party offending, to be by the mayor, &c. committed to the common gaol, until paid. 1 Jac. I. c. 9. s. 3.

By s. 4. of the same act, The correction of such as offend within the universities, shall be by the principal officers of the same universities, to whom the administration of justice doth belong. s. 6.

By stat. 4 Jac. I. c. 5. If any person shall remain drinking or tipling in any such inn, &c. the same being viewed by any mayor, head officer, or justice of peace, (or proved by the oath of one witness,

Penalties how recoverable.

Persons remaining tipling in ale-houses.

witness,

witness, or confession of the person offending. 21 Jac. I. c. 7. s. 1.) such person (if presented, indicted, or convicted in six months, s. 11.) shall forfeit 3s. 4d. s. 4. to be paid within one week after conviction, to the churchwardens, who shall be accountable to the poor, and if he neglect to pay the forfeiture, the same shall be levied by warrant of distress from the court, judge, or justices, or before whom such conviction shall be, may punish the offender, *by setting him in the stocks for four hours.* s. 5.

Every person who shall be drunk, and thereof lawfully convicted within six months, s. 11.) shall forfeit 5s. to be paid within one week after conviction, to the Church Wardens, who shall be accountable to the poor; and if he neglect to pay the forfeiture, the same shall be levied by warrant of distress from the court, judge, or justices, before whom the conviction shall be, and if not able to pay, such offender shall be committed to the stocks, there to remain for the space of six hours, s. 2.

Persons getting drunk, first offence.

Any person, once convicted of drunkenness, being again convicted, shall be *Second offence.* bound with two sureties, to the keeping, in one recognizance of 10l. to be of good behaviour. s. 6.

All offences in this act, and 1 Jac. I. c. 9. may be inquired of, and presented before, the justices of assize, in their circuits, justices of peace in their sessions, and before mayors, bailiffs, or

other head officers, in cities and towns corporate, who may inquire of trespasses, &c. and in every court leet. *f. 5.*

And also all constables, church-wardens head-boroughs, tythingmen, aleconners, and sidersmen, shall in their oaths, incident to their offices, be charged to present offences, contrary to this statute (or 1 *Jac. I. c. 9.*) 4 *Jac. I. c. 5. f. 7.* and 21 *Jac. I. c. 7. f. 5.*

By 21 *Jac. I. c. 7.* Any justice, in any county, and any justice, or other head officers, in any city or town corporate, may, upon his own view, confession of the party, or proof of one witness, on oath, convince any person of drunkenness, whereby such person shall forfeit 5s. and for the second offence he shall become bound to good behaviour, as if convicted in open sessions. *f. 3.*

If any alehouse-keeper shall be convicted for any offence against any the branches of either. 1 *Jac. I. c. 9.* or 4 *Jac. I. c. 5.* he shall, for the space of three years after conviction, be disabled to keep any such alehouse. *f. 4.*

*Alehouse-keepers
tippling or get-
ting drunk.*

The act 4 *Jac. I. c. 5.* concerning drunkenness, is not to restrain ecclesiastical jurisdiction, but an offender against that act, once punished by any of the ways before mentioned, shall not be punished again by any other ways or means. 4 *Jac. I. c. 5. f. 8, 9.*

So detestable and odious is drunkenness in the eye of the law, that it has ever been held, that that

that artificial madness, which is produced and voluntarily contracted by drunkenness and intoxication, and by which depriving men of their reason, puts them in a temporary phrenzy, is an aggravation of the offence, rather than excuse, for any criminal misbehaviour. 4 *Black. Com.* 25.

And Sir *Edward Coke* says, a drunkard, who is *voluntarius demon*, i. e. a voluntary madman, hath no privilege thereby; but what hurt or ill soever he doth, his drunkenness doth aggravate it. 1 *Inst.* 247; and he shall be punished for it, as much as if he had been sober. 1 *Hawk. c.* 1. *f.* 6.

SECTION VIII.

Diversions and Gaming in Public Houses.

Stat. 25 *Geo.* II. *c.* 36. *f.* 2. Whereas the multitude of places of entertainment for the lower sort of people is a great cause of thefts and robberies, as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence thereof are put on unlawful methods of supplying their wants and renewing their pleasures, in order therefore to prevent the same temptation to thefts and robberies, and to correct as far as may be the habit of idleness, which is become too general over the whole kingdom, and is productive of so much mischief

*Penalty on
alchouse-keepers
for permitting
unlawful diver-
sions.*

mischief

mischiefe and inconvenience, be it enacted, &c. that any house, room, garden, or other place, kept for public dancing, music, or other public entertainment of the like kind, in the cities of London and Westminster, or within 20 miles thereof, without a licence had for that purpose, from the last preceding Michaelmas quarter sessions of the peace, to be holden for the county, city, riding, liberty, or division in which such house, room, garden, or other place is situate (who are hereby authorized and impowered to grant such licences as they in their discretion shall think proper) signified under the hands and seals of four or more justices there assembled, shall be deemed a disorderly house or place: and every such licence shall be signed and sealed by the said justices in open court, and afterwards be publicly read by the clerk of the peace, together with the names of the justices subscribing the same; and no such licence shall be granted at any adjourned sessions; nor shall any fee or reward be taken for any such licence: and it shall and may be lawful to and for any constable, or other person, being thereto authorized, by warrant under the hand and seal of one or more of his majesty's justices of the peace, of the county, city, riding, division, or liberty, where such house or place shall be situate, to enter such house or place, and to seize every person who shall be found therein, in order that they may be dealt with according to law: and every person keeping such house, room, garden, or other place, without such licence as aforesaid, shall

shall forfeit the sum of 100*l.* to such person as shall sue for the same ; and be otherwise punishable as the law directs, in cases of disorderly houses.

And, by the same act *sect.* 5. it is provided, that nothing in this act shall extend, or be construed to extend to the theatres-royal in *Drury-Lane* and *Covent-Garden*, or the theatre, commonly called the King's Theatre, in the *Hay-Market*, or any of them, nor to such performances and public entertainments as are or shall be lawfully exercised, and carried on, under, or by virtue of letters patent, or licence of the Crown, or the licence of the Lord Chamberlain of his Majesty's household.

And *sect.* 5. this law enacts, that if any two inhabitants of any parish or place, paying *scot* and bearing *lot* therein, do give notice in writing to any constable (or other peace officer, of the like nature where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or place, the constable or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to one of his Majesty's justices of the peace of the county, city, riding, division or liberty, in which such parish or place does lie ; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum

Two inhabitants to give notice to a constable.

of

of 20*l.* each, to give, or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of 30*l.* to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expences of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division or liberty, where the offence shall have been committed, and shall be paid the same

*Overseer to pay
the reward.*

by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants; and in case such overseers shall neglect or refuse to pay to such constable or other officer, such expences of the prosecution as aforesaid, or shall neglect or refuse to pay, upon demand, the said sums of 10*l.* such overseers, and each of them shall forfeit to the person entitled to the same, double the sum so refused or neglected to be paid.

The rewards mentioned in this clause, joined to the nuisance that disorderly houses must be to the neighbours, should, as one would imagine, be a sufficient incentive to the execution of this act.

Sett. 6. It is provided that upon such constable or other officer entering into such recognizance

zance to prosecute as aforesaid, the said justice of peace shall forthwith make out his warrant to bring the person so accused of keeping a bawdy house, gaming house, or other disorderly house, before him, and shall bind him, or her, over to appear at such general or quarter sessions or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the mean time, and until such indictment shall be found, heard and determined, or be returned by the grand jury not to be a true bill.

Sett. 7. It is also provided, that in case such constable shall neglect or refuse, upon such notice, to go before any justice of the peace, or to enter into such recognizance, or shall be wilfully negligent in carrying on the said prosecution, he shall for every such offence forfeit the sum of 20*l.* to each of such inhabitants so giving notice as aforesaid.

*Constable
neglecting
duty to forfeit
20*l.**

Sett. 8. And whereas, by reason of the many subtle and crafty contrivances of persons keeping bawdy houses, gaming houses or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment; be it enacted, &c. that any person who shall at any time hereafter appear, act, or behave him, or herself, as master and mistress, or as the person having

ing the care, government or management of any bawdy house, gaming house, or other disorderly house, shall be deemed and taken to be the keeper thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof.

Seet. 9. Provided nevertheless, that upon any such prosecutions against any person, for keeping a bawdy house, gaming house or other disorderly house, any person may give evidence against the defendant, or on behalf of the defendant, in such prosecution, notwithstanding his or her being an inhabitant or parishioner of the said parish or place, or having entered into such recognizance as aforesaid.

Seet. 10. And no indictment which shall be preferred against any person for keeping a bawdy house, gaming house, or other disorderly house, shall be removed by any writ of *certiorari* into any court; but such indictment shall be heard, tried, and finally determined, at the same general, or quarter sessions or assizes, where such indictment shall have been preferred, (unless the court shall think proper, upon cause shewn, to adjourn the same) any such writ or allowance thereof notwithstanding.

Stat. 30 Geo. II. c. 24. s. 14. If any person licensed to sell any sorts of liquors, or who shall sell or suffer the same to be sold in his house, outhouse, ground or apartment thereto belonging,

Penalty on ale-house-keepers permitting servants to game.

longing, shall knowingly suffer any gaming with cards, dice, draughts, shuffle boards, mississippi, or billiard tables, skittles, nine pins, or with any other implement of gaming, in his house, outhouse, ground, or apartment thereto belonging, by any journeymen, labourers, servants, or apprentices; and shall be convicted thereof on confession, or oath of one witness before one justice, within six days after the offence committed; he shall forfeit for the first offence 40s. and for every other offence 10l. by distress by warrant of such justice; three fourths of which shall be to the churchwardens for the use of the poor, and one fourth to the informer.

Sec. 15. And if any journeyman, labourer, apprentice, or servant, shall game in any house, outhouse, ground, or apartment thereto belonging, where-
Penalty on journeymen, &c. gaming.

in any liquors shall be sold; and complaint thereof shall be made on oath before one justice where the offence shall be committed: he shall issue his warrant to the constable or other peace officer of the place, wherein the offence is charged to have been committed, or where the offender shall reside, to apprehend and carry the offender before some justice of the place where the offender shall be committed, or where the offender shall reside; and if such person shall be convicted thereof by the oath of one witness or confession, he shall forfeit not exceeding 20s. nor less than 5s. as the justice shall order, every time he shall so offend and be convicted as aforesaid,
 one

one fourth to the informer, and three fourths to the overseers for the use of the poor; and if he shall not forthwith pay down the same, such justice shall commit him to the house of correction or some other prison of the place where he shall be apprehended, to be kept to hard labour for any time not exceeding one month, or until he shall pay the forfeiture.

One justice may determine offences. Sect. 16. And any justice unto whom complaint upon oath shall be made, of any offence committed against this act shall issue his warrant for bringing before him or some other justice of such place, the person charged with such offence and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction; and if it shall appear upon oath to the satisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the prosecutor or of the person accused, and who will not voluntarily appear, he shall issue summons to convene him to give his evidence; and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witness before him; and on his appearance, if he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the public prison for any time not exceeding three months.

Seet. 17. And no persons charged on oath with being guilty of any of the offences punishable by this act, and which shall require bail, shall be admitted to bail before twenty-four hours notice, at least, shall be proved by oath to have been given in writing to the prosecutor, of the names and places of abode of the persons proposed to be bail for any such offender or offenders, unless the bail offered shall be well known to the justice or justices, and he and they shall approve of them; and every such offender and offenders who shall be bound over to the general quarter sessions of the peace, or gaol delivery of the county, city or town wherein the offence charged on him, shall have been committed, to answer any such offences punishable by this act, shall be tried at such general quarter sessions of the peace, or sessions ofoyer and terminer, and gaol delivery, which shall be held next after his, her, or their being apprehended, unless the court shall think fit to put off the trial on just cause made out to them.

Seet. 18. And in all proceedings on this act, any person shall be admitted to be a witness, notwithstanding his being an inhabitant of the place wherein the offence shall have been committed.

Seet. 19. And the justice before whom any person shall be convicted upon this act, shall cause the conviction to be drawn up in the form or to the effect following:

To wit. *BE it remembered, that on this — day of — in the — year of his majesty's reign, A. B. is convicted before — of his majesty's justices*

justices of the peace, for the said county of — or for the — riding or division of the said county of — or for the city, liberty or town of — (as the case shall happen to be) for — and — the said — do adjudge him, or her, to pay and forfeit for the same, the sum of — given under — the day and year aforesaid.

The same to be written upon parchment, and transmitted to the next sessions, to be filed amongst the records; and if any person shall appeal to the said sessions, the justices there shall, upon receiving the said conviction, proceed to hear and determine the matter.

Sect. 20. And no *certiorari* shall be granted, to move any proceedings upon this act.

Sect. 21. And if any person convicted of any offence punishable by this act, shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted,

Appeal. he may appeal to the next sessions, and the execution of the judgment shall in such case be suspended, the person convicted entering into recognizance at the time of the conviction, with two sureties in double the sum he shall have been adjudged to pay, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said sessions: and the sessions shall award such costs as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged to be forfeited, together with such costs

costs as the court shall award, or in default thereof shall suffer the pains and penalties by this act inflicted upon the persons respectively, who shall neglect to pay, or shall not pay the forfeitures by this act to be paid.

Sect. 22. And no person punished by this act shall be punished by any other law.

SECTION IX.

Concerning the quartering or billeting of Soldiers.

BY 3 Car. 1. c. 1. (the petition of rights) the people shall not be burthened to suffer soldiers and marines to sojourn in their houses against their wills.

And by the 31 Car. 2. c. 1. no officer, military or civil, nor any other person, shall presume to quarter any soldier upon any subject or inhabitant of this realm, without his consent, and it shall be lawful for every such subject and inhabitant to refuse to sojourn any soldier, notwithstanding any command or billeting whatsoever. *sect.* 54.

But these acts, so far as they respect the keepers of inns, livery-stables, ale-houses, or like places, are annually dispensed with; for the act for punishing mutiny and desertion constantly contains clauses to the following effect:

During

During the continuance of—it shall be lawful for the constables, tythingmen, and headboroughs, and other chief officers and magistrates of cities, towns, villages, and other places,

Who may billet soldiers on publicans.

within *England, Wales, and Berwick*, and in their default or absence, for one justice near the place, and for no others, to *quarter and billet the officers and soldiers* in his majesty's service, in inns, livery stables, alehouses, and victualling houses, and the houses of sellers of wine by retail, to be drunk in their houses, and all houses of persons selling brandy, strong waters, cyder, or metheglin, by retail, to be drunk in houses, (except the houses of distillers and shop-keepers, whose principal dealings shall be more in other goods than in brandy and strong waters, so as such distillers and shop-keepers do not suffer tippling in their houses, and in no other, and in no private houses.)

Penalty on officers quartering soldiers contrary to the act.

is further enacted, that if any military officer take upon him to quarter soldiers otherwise than by this act, or offer any menace or compulsion to any mayors, constables, or other civil officers before mentioned, to discourage them from performing their duty hereby required, such military officer shall (being convicted before two of the next justices of the peace, by oath of two witnesses) be, *ipso facto*, cashiered and disabled to hold any military employment in his majesty's service, provided the conviction be affirmed at the next quarter sessions, and a certificate transmitted

mitted to the judge advocate, who is to certify the same to the next court-martial: and in case any person find himself aggrieved, in that such constable, &c. or magistrate (such magistrate not being a justice of peace) has quartered in his house a greater number of soldiers than he ought to bear, in proportion to his neighbours, and shall complain thereof to a justice of peace of the division; or in case such magistrate be a justice of the peace, then, on complaint to two justices, such justices shall have power to relieve such persons, by ordering so many of the soldiers to be removed, and quartered upon such other person as they shall see cause. *Mutiny Act, 33 Geo. III. s. 2, 4.*

How persons aggrieved by the quartering of soldiers are to be relieved.

No justice of peace, having any military office, or commission in England, shall be concerned in quartering soldiers in the regiment, troop, or company, under the command of such justice, but all acts executed by such justice, concerning the same, shall be void. *s. 25.*

No justice, being a military officer to quarter his own troops.

If any officer shall take, or knowingly suffer to be taken any money, of any person, for excusing the quartering of officers or soldiers, such officer shall be cashiered, and be incapable of serving in any military employment. *s. 28.*

Penalty of officers taking money to excuse quartering soldiers.

The officers and soldiers so quartered shall be

E

received

Soldiers to be received and furnished with diet and small beer.

received and furnished with diet and small beer by the owners of the inns, &c. paying the rates after mentioned. *f. 26.*

In case any person, on whom any soldier shall be quartered, (except on a march, or employed in recruiting, and except the recruits for seven days), shall be desirous to furnish such non-commissioned officers, or soldiers, *with candles, vinegar, and salt, and with either small beer or cyder*, not exceeding five pints for each man a day, *gratis*, and allow them the use of the fire and utensils for dressing and eating their meat, and give notice of such his desire to the commanding officer, and shall furnish the same accordingly; then the non-commissioned officers and soldiers so quartered shall provide their own victuals; and the officer to whom it belongs to receive, or that does receive the pay and subsistence, shall pay the sums after mentioned, to be payable for diet or small beer to the non-commissioned officers and soldiers aforesaid. *f. 27.*

Officers may exchange quarters.

Commanding officers may exchange any men or horses, quartered in any place, with another man or horse quartered in the same place, if the number of men or horses do not exceed the number at that time billeted on such house; and the constables, &c. are to billet such men and horses so exchanged accordingly. *f. 30.*

The

The officers, men, and horses belonging to his majesty's horse or dragoons, shall be quartered in inns, and other houses, in which officers and soldiers are allowed to be quartered, and they shall be received and furnished by the occupiers of such inns, &c. with diet and small beer, and with stables, and hay and straw for their horses, paying for the same the rates after mentioned, out of the subsistence money for diet and small beer, and hay and straw for their horses. *f. 31.*

Horse and dragoons may be quartered as foot.

When any horse or dragoons shall be quartered upon the owner or occupier of any alehouse, &c. who shall have no stables; then, upon complaint to two justices, and making such allowance, in lieu of quartering such horse, as such justices shall think reasonable, such justices may order the men and their horses to be removed, and quartered upon some other persons who have stables, and settle a proper allowance, to be made by the person having no stables, in lieu of quartering such horse, to be paid by such person, amongst the persons to whom such men and horses shall be removed, or be applied in furnishing quarters for such men, and horses, as the case may require, and the justices think fit. *f. 32.*

Case of quartering horse or dragoons on an alehouse-keeper who has no stables.

Every officer to whom it belongs to receive the pay or subsistence money, shall, upon each receipt, give public notice to all persons keeping, inns, or other places where officers or soldiers are

Rates to be allowed innkeepers for diet.

quartered, and shall appoint the said inn-keepers, &c. to repair to their quarters, at such times as they appoint for the payment of the officers or soldiers, which shall be *within four days after receipt of the same*; and the said inn-keepers, &c. shall then acquaint such officers with the accounts between them and the officers and soldiers quartered in their houses, which the said officers are to pay *before any of the subsistence be discharged*; provided the accounts exceed not.

For a commission officer of horse, under the degree of a captain for diet and small beer

2 0

One commission officer of dragoons, under the degree of a captain

1 0

One commission officer of foot, under the degree of a captain

1 0

And if such officers have a horse, for such horse, hay and straw

0 6

One light horseman, or dragoon's diet small beer

0 6

And hay and straw for his horse

0 6

One foot soldier's diet, and small beer

0 4

And if any officer shall not give notice as aforesaid, and upon producing such account stated pay the same, the paymasters of the forces are to satisfy the said sums out of the arrears due to the officers, and if none be due, they are to deduct it from their next subsistence money, and the officers thus offending shall *ipso facto* be cashiered. *f.* 37.

The

The high constables, petty constables, head boroughs, and tything men, within the city and liberties of *Westminster*, and places adjacent may billet the officers and soldiers of the foot guards, in such houses only as by this act are limited in and about the city and suburbs of *Westminster*, and places adjacent; except the city of *London*; and when any order shall issue for the quartering officers, or soldiers in *Westminster* and places adjacent, the high constable shall deliver out precepts to the petty constables of each parish, and such petty constable shall quarter such officers and soldiers in houses subjected thereto by this act as in other parts of England. *f. 37.*

High constables in Westminster may quarter the foot guards there.

If any officer civil or military shall quarter any of wives, children, men, or maid servants of any officer or soldier, in any house, against the consent of the owners; the party offending, if an officer of the army, shall upon complaint and proof made to the commander in chief of the army, or judge advocate, be *ipso facto* cashiered; and if a constable or other civil officer, he shall forfeit to the party aggrieved 20s. upon complaint and proof made to the next justice, by distress and sale of goods. *f. 48.*

Penalty on quartering the wives, children or servants of soldiers.

If any person, liable to have any officer or soldier quartered on him, shall refuse to receive or victual such officer or soldier, or to allow the things before directed according to this act,

Penalty on ale-house-keepers refusing to receive soldiers.

or shall neglect to furnish good and sufficient hay and straw for each horse so quartered, at the rate before mentioned, and shall be convicted before any justice, either by confession, or by oath of one witness, every person so offending shall forfeit not exceeding five pounds nor less than 40s. to be levied by distress and sale of goods, by warrant of such justice, directed to any constable within the county or liberty, or to any of the parish, where the offender dwells, the said sum to be applied, first in making satisfaction to any soldier for the expence he may have been put to in not being quartered, as such justice shall direct, and the remainder shall be paid to the overseers for the use of the poor. *s.* 68.

Morton v. Cloebury and another. Bucks Lent Assizes, 1757. In an action of trespass against two justices of the peace, who had issued a warrant for levying the penalty upon the plaintiff for not receiving a soldier billeted upon him; the case upon the evidence seemed to be thus: *A shopkeeper, who likewise dealt in spirituous liquors, in order to intitle himself to a licence for selling spirituous liquors by retail, had a licence as a victualler; for the sake of obtaining this last licence, some beer was laid in by him, of which an account was taken by an excise officer, as is done of the stock of a victualler; but he never sold any of this, nor acted in any manner as a victualler, nor suffered spirituous liquors to be drunk in his house.* The plaintiff was non-suited, for want of producing the warrant of the two justices: *But Foster, J.* before whom the cause was tried, said,

said, he should upon the merits have been of opinion, that the plaintiff was not liable to have soldiers quartered on him. *Mf. Rep.* stated in 4 *Bacon's Abr.* 582.

SECTION X.

Ale Vessels and the Measures thereof—Plate Vessels.

BY *stat. 8 Eliz. c. 9.* The justices in Easter sessions yearly, and mayors and other head officers in corporations, shall rate the price of ale barrels, kilderkins, firkins, and other vessels to be sold for ale or beer to be uttered therein: And if any cooper shall not sell the same according to such rate, he shall forfeit 3s. 4d. half to the King and half to him that shall sue.

Stat. 12. Cha. II. c. 24. f. 34. and 1 W. III. c. 1. c. 24. f. 5. Every barrel of beer within the bills of mortality, shall be 36 gallons, and the barrel of ale 32 gallons; and in all other places 34 gallons shall be reckoned for a barrel of beer or ale.

Stat. 11 and 12 Will. III. c. 15. f. 1. All persons retailing ale or beer within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, shall retail, utter and sell their ale and beer in and from their respective houses by a full-ale quart or ale pint, according to the standard remaining in the custody of the chamberlains

berlains of the exchequer, in a vessel made of wood, earth, glass, horn, leather, pewter, or other wholesome metal, made, sized, and equalled unto the said standard, and signed, stamped, or marked to be of the content of the said ale quart or ale pint, according to the said standard, either from the said exchequer, or from the city of London, or some other place, where a standard shall be kept, and not in any other vessel not signed and marked as aforesaid, on forfeiture of a sum not exceeding 40s. nor less than 10s. to be recovered as herein after is provided.

Sett. 2. If any inn-keeper, victualler, sutler, or other retailer aforesaid, shall sell any ale, beer in a vessel not marked, or deny to give the particular number of quarts, &c. in any reckoning, such inn-keeper, &c. shall not, for non-payment of the reckoning, detain any of the persons things not paying the same, but be left to his action at law.

Sett. 5. Every mayor or chief officer of every city, borough, or market town, shall, on request, cause all such ale quarts and pints, made of wood, &c. as shall be brought to him, to be measured and sized with such standard, and marked with W. R. and a crown; which mark the said mayor or chief officer are to provide, and to take not above a farthing for marking each measure: the mayor or chief officer not doing his duty herein to forfeit 5*l.* and treble damages to the party, by action at law.

Sett. 6. One moiety of the penalties in this act shall go to the poor of the place, the other to the prosecutor,

prosecutor, to be recovered by the oath of one credible witness before a justice of peace, and prosecution within 30 days after the offence committed; and the justices of peace to cause to levy the penalty.

Sett. 7. Nothing in this act shall extend to beer or ale sold, to be sent out of the house, if it be measured out by the standard.

Sett. 8. Actions brought against justices of peace, or persons employed by them, upon the execution of this act, shall be laid in the proper county only, to which the general issue may be pleaded, &c. and upon verdict, &c. the defendant to recover treble costs.

Sett. 9. The justices of peace at their quarter sessions, are to give this act in charge to their juries.

Sett. 10. This act shall not extend to colleges or halls in the universities.

By *stat.* 12 and 15 *W. III. c. 11. s. 19.* Nothing in the act 11 *W. III. c. 15.* shall extend to deprive the universities of their right of seizing and marking of measures for ale and beer within their jurisdictions.

Note. Most of the books do set forth that the sub-commissioners, or collectors of excise, shall procure standard quarts and pints out of the Exchequer, for every market town; but this was only required of them before *June 24, 1700*, and not since. *s. 3.*

An indictment will lie for selling ale in pots unsealed, although the statute appoints another method of proceeding

Indictment.

because

because measures are by the common law, and the statutes only direct the manner of ascertaining them. *Blackerly*, 10.

But in such case the indictment must not be upon the statute, but at the common law; and the offence ought to be laid, not for selling in pots unsealed, but in pots wanting measure.

By *stat.* 7 and 8 *W. III. c.* 19. Intituled, 'An act to encourage the bringing plate into the mint to be coined, and for the farther remedying the ill state of the coin of the kingdom,' it is enacted, that from and after *May*, 1696, no person keeping any inn, tavern, alehouse, or victualling house, or selling wine, ale, beer, or any other liquor by retail, shall publicly use, or expose to be used in his house, any wrought or manufactured plate whatsoever, or any utensil or vessel thereof (except spoons) under the penalty of forfeiting the same, or the value thereof with costs, to him that shall sue.

SECTION XI.

Enhancing the Price of Ale.

By 2 and 3 *Edw. VI. c.* 15. If any brewer shall conspire, covenant, promise, or make any oaths that they shall not sell but at certain prices, such person shall forfeit for the first offence 10*l.* and if he pay not the same within six days, shall suffer 20 days imprisonment; and for the second offence

offence shall forfeit 20*l.* if paid within six days or else suffer the pillory; and for the third offence shall forfeit 40*l.* if paid within six days, or else sit on the pillory, lose one ear, and be deemed infamous; and if such conspiracy be made by a corporation, it shall also be dissolved, and the offences shall be determined at the assizes, sessions of the peace, or court-leet.

But now, by 2 Geo. III. c. 14. s. 1. No brewer, inn keeper, victualler, or other retailer of strong beer, or ale, shall be sued, impleaded or molested, by indictment, information, popular action, or otherwise, for advancing the price of strong beer, or ale, in a reasonable degree.

SECTION XII.

Debts for Spirituous Liquors under Twenty Shillings not recoverable.

BY the 24 Geo. II. c. 40. No person shall be entitled unto, or maintain any action, or recover either in law or equity, any money, debt or demands for spirituous liquors, unless such debt has been *bona fide* contracted at one time, to the amount of 20*s.* or upwards; nor shall any particular article in any account for distilled spirituous liquors be allowed, when the liquors delivered at one time, and mentioned in such article amount not to the value of 20*s.* at least, and that

without fraud, and where no part of the liquors so sold have been returned, or agreed to be returned; and in case any retailer of spirituous liquors, with or without a licence, shall take any pledge for the payment of any money due for such spirituous liquors, he shall forfeit 40s. for every pledge so taken, to be levied by warrant of one justice, where the offence is committed; and one moiety shall go to the use of the parish, and the other moiety to the informer: And the person to whom such pledge belongs shall have the same remedy for recovering it, or the value, as if it had never been pledged. *f. 12.*

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